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3. Evidence (§ 383 (7)*)—Trust Deeds—Sale—Recitals in Deed.—By specific provision of Code Supp. 1910, § 3333a, recitals in a deed under sale under deed of trust that due and legal notice of time, place, and terms of sale was given are prima facie evidence of their truth.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1668; Dec. Dig. § 383 (7).* 10 Va.-W. Va. Enc. Dig. 101.]

4. Mortgages (§ 369 (3)*)—Adequacy of Consideration.—Where the circumstances disclose a fair sale after due notice and on competitive bidding, inadequacy of consideration, unless so gross as to raise a presumption of fraud, is not sufficient to avoid the deed.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 1094; Dec. Dig. § 369 (3).* 10 Va.-W. Va. Enc. Dig. 107.]

5. Mortgages (§ 86 (3)*)—Trust Deeds—Capacity of Grantor—Evidence.—Where grantor of trust deed made a clear and intelligent deposition that he had, for 25 years, conducted his own business, that was sufficient to refute alleged mental incapacity, although he was, 25 years prior to making the deed, committed to an insane asylum for two months.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. § 1364; Dec. Dig. § 86 (3).* 10 Va.-W. Va. Enc. Dig. 14.]

Appeal from Circuit Court, Giles County.

Bill by Geo. W. Givens against John E. Hopkins. Decree for complainant, and defendant appeals. Reversed and bill dismissed.

W. B. Snidow, of Pearisburg, for appellant.

Minter & Minter, of Pocahontas, for appellee.

W. D. BUNN & CO. *v.* DICKENSON COUNTY.

Sept. 11, 1916.

[89 S. E. 872.]

1. Highways (§ 113 (4)*)—Contracts—Construction.—A contract between plaintiffs and the county obligated plaintiffs to complete a road according to plans for \$39,900, or to build according to classified bid so as not to exceed \$41,000. The bids were made on unit prices for various kinds of work for the construction of the described road. The county reserved the right to make such minor changes in the location as might seem best, subject to the provision that the contractor should be paid at the unit prices set out in the proposal for any excess in total quantities that the changed location might have over the location shown in the plans. Held, that changes in the location of the road which necessitated greater excavations than those necessary for completion of the road according to the original plans

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

were minor changes for which the contractor was entitled to compensation if by reason of the increase the excavations exceeded the total quantities.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 349, 351, 352; Dec. Dig. § 113 (4); Contracts, Cent. Dig. § 1335.* 2 Va.-W. Va. Enc. Dig. 872.]

2. Highways (§ 113 (4)*)—Counties—Construction.—Though the contract provided that the material from the excavations was to be used in making fills for the road, and though the contractors had made a lump bid, yet, as the contract provided that excavations should include the removal and placing in embankments of all materials taken from side cuts or borrow pits, as might be directed by the engineer, and that, in case the excavations did not furnish sufficient dirt for embankments, the deficiency should be supplied by widening the excavations or from borrow pits, and, as the engineer deemed that the contractor was entitled to compensation for excavations made from borrow pits, the contractor cannot be defeated in his claim for compensation merely because by change in the location of the road the excavations were increased so as to furnish sufficient material for embankments.

[Ed. Note.—For other cases, see Highways, Cent. Dig. §§ 349, 351, 352; Dec. Dig. § 113 (4).* 12 Va.-W. Va. Enc. Dig. 872.]

Error to Circuit Court, Dickenson County.

Claim by W. D. Bunn & Co. against Dickenson County. The claim was disallowed, and claimants appealed to the circuit court. There was a judgment for the County, and claimants bring error. Reversed.

Bullitt & Chalkley, of Big Stone Gap, and *S. H. & G. C. Sutherland*, of Clintwood, for plaintiff in error.

Chase & Daugherty and *Skeen & Skeen*, all of Clintwood, for defendant in error.

SUTHERLAND et al. v. WAMPLER.

Sept. 11, 1916.

[89 S. E. 875.]

1. Trial (§ 260 (1)*)—Requested Instructions—Harmless Error.—It is the settled rule of the court not to reserve the judgment for the trial court's refusal to give other instructions when it appears that the jury have been correctly and fully instructed

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 651; Dec. Dig. § 260 (1).* 7 Va.-W. Va. Enc. Dig. 715.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.